

ORIGINAL

May 19, 2005

direct dial 202 508 5835
direct fax 202 585 0070
LMow@KilpatrickStockton.com

Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

MAY 19 2005

**Federal Communications Commission
Office of Secretary**

Re: WIRELESS TELECOMMUNICATIONS BUREAU,
BROADBAND DIVISION

Petition for Reconsideration of Dismissal of
Application for Modification of ITFS Stations
KZB28 (BMPLIF-19950524DL), KHU90 (BMPLIF-
19950524DN) and KZB29 (BMPLIF-19950524DM);
WT Dkt. 03-66

Dear Ms. Dortch:

Transmitted herewith, on behalf of the School Board of Miami-Dade County, Florida (FRN 0004998118) and Southern Florida Instructional Television, Inc. (FRN 0008094104), are an original and four (4) copies of their "Reply to Opposition to Motion for Extension of Time" for filing oppositions in the above-referenced matter.

Please date-stamp the enclosed "S&R" copy of this filing and return it to the courier delivering this package. Should any questions arise with regard to this filing, please contact the undersigned.

Respectfully yours,



Laura C. Mow

Enclosure

WSH11JB01 209129.1

No. of Copies rec'd 11
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

MAY 19 2005

Federal Communications Commission
Office of Secretary

In the Matter of Applications of)
)
SCHOOL DISTRICT OF PALM)
BEACH COUNTY, FLORIDA)
)
For Authorization to Modify Facilities)
of ITFS Station KZB-28, KHU-90 and)
KZB29)
)
Boynton Beach, Florida)

File No. BMPLIF-19950524DL
File No. BMPLIF-19950524DN
File No. BMPLIF-19950524DM

To: The Wireless Telecommunications Bureau

REPLY TO
OPPOSITION TO MOTION FOR EXTENSION OF TIME

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA (the "School Board") and SOUTHERN FLORIDA INSTRUCTIONAL TELEVISION, INC. ("SFITV") (with the School Board and SFITV referred to collectively as the "Miami Educators") hereby reply to the "Opposition to Motion for Extension of Time" (the "Opposition"), filed by Sprint Corporation and Wireless Broadcasting Systems of West Palm, Inc. (the "Petitioners") in the captioned matter. By a "Motion for Extension of Time" filed on April 29, 2005, the Miami Educators had sought until June 2, 2005 to oppose the Petitioners' Consolidated Petition for Reconsideration ("Consolidated Petition") of the Commission's dismissal of the above-captioned applications pursuant to its new rebanding *Report and Order* for the Educational Broadband Service.¹ In

¹ *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) ("Rebanding Report and Order").

support of that Motion and in response to Petitioners' Opposition, the following is respectfully submitted:

A. BACKGROUND

The captioned stations are licensed to the School District of Palm Beach County, Florida (the "Licensee"). Petitioners have represented that they lease the captioned stations from the Licensee. The Miami Educators are co-channel licensees with the Licensee. Following the Commission's dismissal of the captioned applications pursuant to paragraph 263 of the *Rebanding Report and Order*, Petitioners filed the Consolidated Petition on October 22, 2004 requesting reinstatement of the dismissed applications, and submitted supplements regarding the KHU90 and KZB29 dismissals on November 23, 2004. The Licensee separately filed a petition for reconsideration of the dismissed applications on October 22, 2004. The Miami Educators have serious issues with the Petitioners and the Licensee with respect to the dismissed applications and could not disagree more with the Petitioners' characterization of the reinstatement of those applications as "a simple question of fact."

Since the filing of the Consolidated Petition, the Petitioners and BellSouth (as the excess capacity lessee of the Miami spectrum) have engaged in extensive good faith discussions intended to result in a comprehensive settlement of controversies arising from the Consolidated Petition and other petitions for reconsideration filed by Petitioners, Licensee and the Miami Educators with respect to applications dismissed pursuant to the *Rebanding Report and Order*, including the dismissed captioned applications. Throughout this process, both Petitioners and BellSouth have been willing participants in these discussions and both parties have acknowledged the value in continuing to postpone further substantive pleadings relating to the dismissed applications pending the discussions. Petitioners were informed of every motion for

extension of time filed by the Miami Educators, in each case in advance of filing. Petitioners consented to some of these motions, encouraged settlement discussions, and never once opposed the various motions for extension of time filed by the Miami Educators -- indeed, the Licensee does not even oppose the April 29 Motion which is currently the subject of the Opposition.²

In short, while the Miami Educators are disappointed that Petitioners have decided not to allow the settlement discussions to reach their culmination, they are fully prepared to submit a substantive response to Petitioners Consolidated Opposition and the Licensee's Petition, and ask only that they be given adequate time to do so. Given their complete focus on settlement discussions up to the April 29 Motion, and the abrupt termination of the ongoing settlement discussions by Petitioners, the Miami Educators request only that they be given until June 2, 2005 (as requested in their April 29 Motion) to submit their responsive pleadings.

B. DISCUSSION

1. Throughout the Extension Period, There Has Been Ample Justification for the Continued Postponement of the Underlying Substantive Pleadings.

In its Opposition (at p. 3), Petitioners argue that there has been no justification for the continued postponement of substantive pleadings, citing the Commission's policy to deny the routine grant of extension requests that fail to provide sufficient reason to make an exception to that policy. To the contrary, however, up until very recently, the Miami Educators (and Petitioners and the Licensee) saw great value in postponing the substantive opposition to the Petitioners' Consolidated Petition and the Licensee's Petition and provided ample reason for such postponement. Not only did the settlement discussions hold out the hope of resolving all

² Given that the Licensee has not opposed the April 29 Motion, should the Petitioners prevail with their Opposition, the Miami Educators could be placed in the awkward position of having to respond to the Consolidated Petition and the Licensee's Petition in a piecemeal fashion, rather than at the same time, i.e., on June 2, 2005.

differences among the interested parties, but it would have enabled the Commission to avoid the costly expenditure of time and resources required to read and analyze all substantive pleadings relating to the dismissed applications (as well as pleadings on related matters) and to resolve the dispute by written order.

2. The Underlying Issues Are Not As “Simple” As Petitioners Suggest.

Petitioners next seek to neutralize the obvious benefits to continued postponement of the substantive pleadings by characterizing the issues raised in the Consolidated Petition as “simple questions of fact” that can be addressed “without additional information” from the Miami Educators. (Opposition, at p. 4). The Miami Educators beg to differ. There are significant issues of fact and law far beyond the simplistic questions of fact presented by Petitioners in their Opposition -- issues which the Miami Educators will fully address in their substantive pleading to be filed on June 2. If the Commission were to reinstate the captioned applications before any consideration of the issues surrounding those applications, the Miami Educators would be severely prejudiced. The very fact that the Petitioners acquiesced in the continued postponement of the Miami Educators substantive response to the Consolidated Opposition in order to facilitate a comprehensive settlement of the controversy indicates that Petitioners know full well that the issues are not as simple as they now suggest. A pleading relating to the time to be permitted for filing substantive pleadings is not the appropriate place for arguing the underlying merits of the dispute in any event.

C. CONCLUSION

The Miami Educators earnestly desire to settle the dispute with the Petitioners and have engaged in good faith settlement negotiations over these past months to accomplish this goal. Petitioners have fully participated in these discussions and have acquiesced (and even

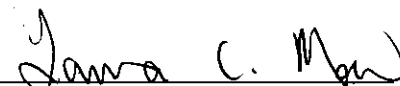
affirmatively consented in many cases) to the continued postponement of the substantive pleadings relating to the dismissed applications. While Petitioners are entitled to abandon these efforts, they should not be permitted to engage in gamesmanship designed to prevent the Commission from receiving and considering a full set of pleadings on the underlying issues. Now that the settlement discussions have apparently broken off, the Miami Educators stand ready to prepare and file their Opposition to the Consolidated Petition (as well as the Licensee's Petition) and ask only for reasonably adequate time to do so.

WHEREFORE, the foregoing premises considered, the School Board of Miami-Dade County, Florida and Southern Florida Instructional Television, Inc. respectfully request the Commission to grant their April 29 Motion for Extension of Time and defer the due date of their oppositions to June 2, 2005.

Respectfully submitted,

THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

SOUTHERN FLORIDA INSTRUCTIONAL
TELEVISION, INC.

By: 
Thomas J. Dougherty, Jr.
Laura C. Mow
Kilpatrick Stockton, LLP
607 14th Street, N.W.
Suite 900
Washington, D.C. 20005
(202) 508-5800

May 19, 2005

CERTIFICATE OF SERVICE

I, Cynthia Johnson of Kilpatrick Stockton, LLP, hereby certify that I have, on this 19th day of May of 2005, had copies of the foregoing "Reply to Opposition to Motion for Extension of Time" delivered to the following via electronic mail or overnight delivery:

**Catherine W. Seidel, Acting Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: Cathy.Seidel@fcc.gov**

**John Schauble
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: John.Schauble@fcc.gov**

**Edwin N. Lavergne
Fish & Richardson P.C.
1425 K Street, N.W.
Suite 1100
Washington, DC 20005
Via Electronic Mail: lavergne@fr.com**

**Jennifer Richter, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W. Suite 5500
Washington, D.C. 20006
Via Electronic Mail: jrichter@mofo.com**

**Peter Tracy
Bell South Wireless Cable Inc.
754 Peachtree Street, 14th Floor
Atlanta, GA 30308
Via Electronic Mail: peter.tracy@bellsouth.com**

**Joel Taubenblatt, Division Chief
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via Electronic Mail: Joel.Taubenblatt@fcc.gov**

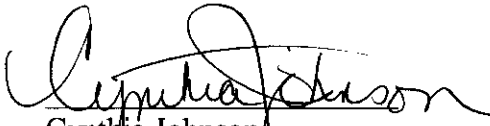
**Nancy Zaczek
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
Via Electronic Mail: nzaczek@fcc.gov**

**Judy Garcia
School Board of Palm Beach County
505 S. Congress Avenue
West Palm Beach, FL 33427
Via Electronic Mail: garciaj@palmbeach.k12.fl.us**

**Rudolph F. Crew
Superintendent
School Board of Dade County
1450 NE 2nd Ave.
Miami, FL 33132
By Overnight Delivery**

**John Labonia
South Florida Instructional TV, Inc.
172 N.E. 15th Street
Miami, FL 33132
Via Electronic Mail: jlabonia@wlrn.org**

Best Copying and Printing, Inc.
Portals II
445 12th Street, SW, Room CY-B402
Washington, DC 20554
Via Electronic Mail: FCC@BCPIWEB.COM



Cynthia Johnson